

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

April 27, 2005

DIVISION ONE

Court convened at 9:00 a.m.

Present: Spencer, P.J., Vogel (Miriam A.), J., Mallano, J., Rothchild, J., Suzukawa, J. (Assigned) and Patricia Gonzalez, Deputy Clerk.

B181201 Jermaine S. v. S.C.L.A., (DCFS rpi)

Argument waived, cause submitted.

B180977 Union Pacific Railroad Co., v. S.C.L.A. (Loy, rpi)

Matter continued to May 2005 calendar.

B176832 Saghian et al. v. Gest

Matter continued to May 25, 2005.

B173359 People
 v.
 Ricky Fagras

Merits:

Argued by Margaret E. Dunk for appellant and by Erin M. Pitman for respondent. Cause submitted.

Mallano, J., leaves the bench.

DIVISION ONE (Continued)

B176387 Los Angeles County, D.C.S.
 v.
 Jonathan Love

Merits:

Argued by Jonathan Love, appellant in propria persona and by Tammy Y. Nakada for respondent. Cause submitted.

Mallano, J., returns to the bench.

Vogel, J., leaves the bench.

B173237 Maryana Chervets
 v.
 Robert Dockson et al.

Merits:

Argued by Allan J. Wilson for appellant and by Marc E. Rohatiner for respondents. Cause submitted.

Vogel, J., returns to the bench.

B174814 Patricia Schluter
 v.
 American Golf Corporation et al.

Merits:

Argued by Lisa Chiappetta for appellant and by Joseph P. Collins for respondents. Cause submitted.

Rothschild, J. leaves the bench.

Mallano, J., leaves the bench.

DIVISION ONE (Continued)

B174814 Western General Insurance Co.
 v.
 Encino Executive Plaza, Ltd.

Merits:

Argued by Jeffrey R. Patterson for appellant and by Daniel J. Gonzalez for respondent. Cause submitted.

Mallano, J., returns to the bench.

Suzukawa, J. (Assigned), leaves the bench.

B170406 Carson Harbor Village, Ltd.
 v.
 City of Carson Mobilehome Park

Merits:

Argued by Thomas W. Casparian for appellant and by William W. Wynder for respondent. Cause submitted.

Mallano, J., leaves the bench.

Rothschild, J., returns to the bench.

B173286 Christina Keller
 v.
 Armstrong Garden Centers, Inc.

Merits:

Argued by Brian McMahon for appellant and by Frederick B. Hayes for respondent. Cause submitted.

Rothschild, J., leaves the bench.

Mallano, J., returns to the bench.

DIVISION ONE (Continued)

B172716 Zareh Vartivarian

v.

Fire Insurance Exchange, et al.

Merits:

Argued by Suzanne E. Rand-Lewis for appellant and by David J. Weiss for respondent (The Doctors' Co.) and Gary J. Lorch for respondent (Fire Insurance Exchange). Cause submitted.

Suzukawa, J. (Assigned), returns to the bench.

B172821 Gary A. Paller et al.

v.

Rene Garcia

Merits:

Argued by Thomas G. Martin for appellants and by Filomena Meyer for respondent. Cause submitted.

B167709 Brian Corber

v.

Discover Bank et al.

Merits:

Argued by Brian Lee Corber appellant in propria persona and by Barry Adler for respondents. Cause submitted.

Mallano, J., leaves the bench.

B167259 Yahya Eshaghian et al.

v.

Law Offices of Edelberg & Espina et al.

Merits:

Argued by Robert Shoftman for appellants and by Claire Navarro Espina for respondents. Cause submitted.

April 27, 2005 (Continued)

DIVISION ONE (Continued)

Court adjourned.

B171115 Mottahedeh et al. (Not for Publication)
 v.
 Franchise Tax Board

The judgment (order of dismissal) is affirmed. Respondent Franchise Tax Board is entitled to costs on appeal.

Mallano, J.

We concur: Spencer, P.J.
 Suzukawa, J. (Assigned)

B177158 Los Angeles County, D.C.S. (Not for Publication)
 v.
 A.B.

The order of August 4, 2004, is affirmed.

Mallano, J. Acting P.J

We concur: Vogel (Miriam A.)
 Suzukawa, J. (Assigned)

B173345 People (Not for Publication)
 v.
 Dorsey

The judgment is affirmed.

Mallano, J.

We concur: Spencer, P.J.
 Suzukawa, J. (Assigned)

April 27, 2005 (Continued)

DIVISION ONE (Continued)

B174600 People (Not for Publication)
v.
Caldero

The judgment is affirmed.

Mallano, J.

We concur: Spencer, P.J.
Suzukawa, J. (Assigned)

DIVISION TWO

[illegible]

The judgment is affirmed.

Doi Todd, Acting P.J.

We concur: Ashmann-Gerst, J.
Nott, J. (Assigned)

B174244 Roman (Not for Publication)
v.
Sears, Roebuck and Co.

The judgment is affirmed. Respondent is awarded its costs on appeal.

Doi Todd, J.

We concur: Boren, P.J.
 Ashmann-Gerst, J.

April 27, 2005 (Continued)

DIVISION TWO (Continued)

B168326 Lucas, et al. (Not for Publication)
v.
Volpe., et al.

The judgment and orders appealed from are affirmed. Respondents are awarded their costs on appeal.

Doi Todd, J.

We concur: Boren, P.J.
Nott, J. (Assigned)

DIVISION THREE

B176996 Howard (Not for Publication)
v.
Chenault

The order from which appellant appealed is affirmed. Costs on appeal to plaintiff.

Croskey, J.

We concur: Klein, P.J.
Kitching, J.

B177124 Los Angeles County, D.C.S. (Not for Publication)
v.
Nathan D.

The judgment is affirmed.

Croskey, J.

We concur: Klein, P.J.
Aldrich, J.

April 27, 2005 (Continued)

DIVISION THREE (Continued)

B173329 Vargas, et al. (Not for Publication)
 v.
 Bachsian

The judgment from which defendant has appealed is affirmed. Order denying motion for new trial is affirmed. Costs on appeal to plaintiffs.

Croskey, Acting P.J.

We concur: Kitching, J.
 Aldrich, J.

DIVISION FIVE

B169593 Robert Krell (Not for Publication)
 v.
 Fleming Gray

The June 18, 2003, injunctive order is reversed. The trial court is to enter a new order denying the petition filed May 22, 2003. Defendant, Fleming Gray, is to recover his costs and attorney fees from plaintiff, Robert Krell.

Turner, P.J.

We concur: Mosk, J.
 Kriegler, J.

DIVISION SIX

B174580 People (Not for Publication)
 v.
 Davis

The judgment is affirmed.

Coffee, J.

We concur: Gilbert, P.J.
 Yegan, J.

DIVISION SIX (Continued)

B176587 NBC universal, Inc., et al. Certified for Publication)
v.
Superior Court of Santa Barbara Co., et al.,

We do not take lightly the public's right of access to court proceedings and the interests served by public access. But here our de novo review compels our agreement with the trial court's findings. Sealing the search warrant affidavit and the motion to set aside the indictment avoids impairment of Jackson's right to a fair trial, protects the privacy interests of minors and unindicted purported coconspirators, and protects the ongoing law enforcement investigation.

The sealing orders of the trial court relating to the search warrant affidavit and motion to dismiss "reflect awareness of the tensions between the need to protect the accused as fully as possible and the need to restrict publication as little as possible" and are affirmed. (*Nebraska Press Assn. v. Stuart, supra*, 427 U.S. at p. 566.) The sealing order relating to the indictment is reversed and the cause remanded to the trial court with instructions to release the indictment, redacting only the names of the unindicted coconspirators. The parties shall bear their own costs.

Gilbert, P.J.

We concur: Coffee, J.
 Perren, J.

B174915 Santa Barbara County Child Welfare Services (Not For Publication)
v.
David T.

The placement order is affirmed.

Coffee, J.

We concur: Yegan, Acting P.J.
 Perren, J.

April 27, 2005 (Continued)

DIVISION SIX (Continued)

B174955 Oliver (Not for Publication)
v.
Leary et al.,

The judgment is affirmed. Costs on appeal, including reasonable attorney's fees recoverable under the residential purchase agreement are awarded to respondent Oliver in an amount to be determined by the trial court. Oliver's motion for sanctions on appeal is denied.

Coffee, J.

We concur: Gilbert, P.J.
Yegan, J.

B170355 People
v.
Thoma

Filed order modifying opinion. (No change in the judgment)

DIVISION SEVEN

B173755 Badroos (Not for Publication)
v.
Kensington Caterers, Inc.

The judgment is reversed. The cause is remanded to the trial court for further proceedings not inconsistent with this opinion. The Badrooses are to recover their costs on appeal.

Perluss, P.J.

We concur: Woods, J.
Zelon, J.

April 27, 2005 (Continued)

DIVISION SEVEN (Continued)

B174408 Truong (Not for Publication)
v.
California Insurance Guarantee Association

The order of dismissal is reversed; and the matter is remanded with directions for the trial court to determine whether, consistent with the views expressed in *Berger, supra*, ___ Cal.App.4th ___, the first amended complaint states a cause of action against CIGA for violation of Insurance Code section 1063 et seq. Should the trial court determine the allegations in the first amended complaint are deficient, it is directed to enter an order sustaining CIGA's demurrer to the first amended complaint and granting Toring leave to amend to attempt to cure the defects to state a cause of action for violation of Insurance Code section 1063 et seq. The parties are to bear their own costs on appeal.

Perluss, P.J.

We concur: Johnson, J.
 Woods, J.

B174412 Berger (Certified for Publication)
v.
California Insurance Guarantee Association

The order of dismissal is reversed; and the matter is remanded with directions for the trial court to enter an order sustaining CIGA's demurrer to the first amended complaint and granting the Bergers and the Kayles leave to amend to state a cause of action for violation of Insurance Code section 1063 et seq. consistent with the views expressed in this opinion. The parties are to bear their own costs on appeal.

Perluss, P.J.

We concur: Johnson, J.
 Woods, J.

DIVISION SEVEN (Continued)

B171080 The Lutheran Church-Missouri Synod Foundation (Not for Publication)
 v.
 Wood

The judgment is affirmed. The Foundation is to recover its costs on appeal.

Perluss, P.J.

We concur: Johnson, J.
 Woods, J.

B177493 Los Angeles County, D.C.S. (Not for Publication)
 v.
 Eden F.,

The judgment is affirmed.

Perluss, P.J.

We concur: Johnson, J.
 Zelon, J.

B170889 Alameda Corridor-East (Not for Publication)
 v.
 Allyn

The judgment is reversed. The case is remanded with directions to the trial court to vacate its order sustaining the demurrer without leave to amend as moot and to enter a new order sustaining the demurrer with leave to amend to permit ACE to allege the PUC's approval of the project. The parties are to bear their own costs on appeal.

Perluss, P.J.

We concur: Woods, J.
 Zelon, J.

April 27, 2005 (Continued)

DIVISION SEVEN (Continued)

B175399 Pignatelli (Not for Publication)

V.

Delta Airlines, Inc. et al.,

The judgment is affirmed. Respondent(s) to recover costs.

Woods, J.

We concur: Johnson, Acting P.J.

Zelon, J.

DIVISION EIGHT

B175958 In The Matter Of The Estate Of Helen E. Flaxington, Deceased.

Dugas,

V.

Edwards

Filed order granting motion to dismiss appeal. Appeal (notice of appeal filed June 7, 2004) is dismissed as untimely.

B171636 People (Not for Publication)

V.

Ghanem et al.,

The judgments are reversed with respect to counts 1 and 8, which the superior court shall order dismissed. With respect to all other counts, the judgments of guilt are affirmed, and the case is remanded for resentencing, in accordance with this decision.

Cooper, P.J.

We concur: Boland, J.

Flier, J.

DIVISION EIGHT (Continued)

B175422 Los Angeles County, D.C.S. (Not for Publication)
v.
Samuel G.,

The juvenile court order governing jurisdiction and disposition is vacated. The matter is remanded to the juvenile court. The juvenile court shall order DCFS to provide notice consistent with the ICWA and California Rules of Court Rule 1439. If after receiving proper notice, Children are found not to be Indian children within the meaning of the ICWA, the juvenile court shall reinstate the order finding jurisdiction over Children and shall reinstate its court ordered disposition case plan. If the Children are found to be Indian children, the juvenile court shall conduct a new jurisdictional and dispositional hearing.

Cooper, P.J.

We concur: Rubin, J.
Boland, J.

B172606 Ali (Not for Publication)
v.
Fernandes et al.,

The award of prejudgment interest is reversed and remanded for recalculation. In all other respects, the judgment is affirmed. The parties are to bear their own costs on appeal.

Cooper, P.J.

We concur: Rubin, J.
Flier, J.